

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,)	Cause No. CR-03-80-BLG-RFC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
JUAN MORENO,)	
)	
Defendant.)	
_____)	

This Court sentenced Defendant to a term of 100 months imprisonment in August of 2004. This sentence was rendered pursuant to the United States Sentencing Guidelines, which at the time were mandatory. Subsequently, the United States Supreme Court has held that the Federal Sentencing Guidelines are advisory. *United States v. Booker*, 125 S.Ct. 738, 764 (2005). On April 21, 2006, the Ninth Circuit remanded Defendant's sentence for reconsideration in light of *Booker* and *Ameline*.

Pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005), this Court must determine "whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory." *Id.* at 1084-85.

In this instance, after reviewing the record, the Court answers the question in the negative-
- Defendant Moreno's sentence would not have been materially different had it known that the
Guidelines were advisory.

Under *United States v. Mix*, ____ F.3d ____, 2006 WL 1549737 (9th Cir. 2006), this
Court is required, in fashioning a reasonable sentence, to conduct parallel analysis – first
employing the Guidelines, and then considering the non-guideline sentencing factors under §
3553(a). Pursuant to this directive, the Court concludes that the Guidelines do adequately take
account of the § 3553(a) sentencing factors. Therefore, the Court determines that resentencing
Defendant Moreno's is unwarranted as his sentence would not materially differ under the advisory
guideline regime.

Moreover, Defendant Moreno, in his response to the Court, acknowledged that his
sentence would not be affected under the advisory holding of *Booker*.

DATED this 31st day of July, 2006.

/s/ Richard F. Cebull
RICHARD F. CEBULL
U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

DATE: 7/31/06

BY: _____

I hereby certify that a copy of
this Order was served upon:

Mark Werner

Marcia Hurd

Probation